EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

Application no. 51211/16
THE FOUNDATION OF KING PETER I KARADORDEVIĆ
against Serbia

The European Court of Human Rights (Second Section), sitting on 6 September 2022 as a Chamber composed of:
Jon Fridrik Kjølbro, *President,*
Carlo Ranzoni,
Branko Lubarda,
Pauliine Koskelo,
Jovan Ilievski,
Gilberto Felici,
Diana Sârcu, *Judges,*
and Dorothee von Arnim, *Deputy Section Registrar*,

Having regard to the above application lodged on 10 August 2016,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Foundation of King Peter I Karađorđević (*Zadužbina Kralja Petra I Karađorđevića*), is a foundation established under Serbian law which has its seat in Topola ("the applicant foundation"). It was represented before the Court by Mr Đ. Ninković, a lawyer practising in Belgrade.

2. The Serbian Government ("the Government") were represented by their Agent, Ms Z. Jadrijević Mladar.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant is a foundation established in 1914 by a testament of Peter I Karađorđević, then the king of Serbia. The foundation operated until 1941 and was re-established in 1993. The case concerns the deprivation of

the foundation's property, namely of the Oplenac Agricultural Estate near Topola, consisting mostly of agricultural land and vineyards.

5. After the end of the Second World War, the communist authorities abolished the monarchy in Yugoslavia, which became a federal republic.

6. Since the land register records in Topola had been destroyed during the Second World War, in 1947 the judicial authorities initiated the relevant proceedings with a view to reconstructing those records. Based on witness statements that the land forming the Oplenac Agricultural Estate had been confiscated pursuant to the Decree of 27 March 1947 confiscating all property belonging to the Karađorđević royal family (see paragraph 16 below), in 1947 the court in Topola eventually recorded the Oplenac Agricultural Estate in the land register as a property under public ownership.

7. After the fall of communism in the early 1990s, by a decision of 8 February 1993 the relevant Ministry re-established the applicant foundation.

8. In 1994 the applicant foundation brought a civil action against the State seeking to be declared the owner of the land constituting the Oplenac Agricultural Estate. It argued that there had never been any domestic legal basis for the deprivation of that land which had belonged to the applicant foundation itself and not to any member of the royal family, whose property had indeed been confiscated by the Decree of 27 March 1947 (see paragraph 16 below).

9. After several remittals, in a judgment of 25 September 2009 the Topola Municipal Court eventually ruled in favour of the applicant foundation. It held that the property in question could not have been confiscated on the basis of the Decree of 27 March 1947 (see paragraph 16 below) because it had not belonged to the Karađorđević royal family but to the applicant foundation. Consequently, the applicant foundation was therefore still the owner of that property.

10. On a subsequent appeal, in a judgment of 15 January 2010 the Kragujevac Appeals Court reversed the first-instance judgment and dismissed the civil action. It agreed with the first-instance court that the property in question could not have passed into public ownership on the basis of the Decree of 27 March 1947 (see paragraph 16 below). However, this did not mean that the applicant foundation had retained its ownership because the said property had passed into public ownership even earlier, namely *ex lege* by the entry into force of the Agrarian Reform and Resettlement Act on 28 August 1945 (see paragraph 13 below). The relevant part of that judgment read as follows:

> "[T]he view of the first-instance court that the Agrarian Reform and Resettlement Act could not have been applied in the present case is incorrect ... Article 3 of that Act envisaged the establishment of an agricultural fund with a view to distributing land to farmers. For the purposes of establishing that fund it was envisaged, *inter alia*, that the property of all types of foundations would be taken and [that it would] pass into the hands of the State. The land to be taken in that way passed into the hands of the State

> with all buildings and infrastructure, as provided in Article 4 of the said Act, and Article 37 ... provided that the Act was to enter into force on the day of its publication in the Official Gazette. It is therefore evident that the intention of the Act was that the land be taken by operation of law with a view to forming a fund from which the land would be distributed to the persons entitled to it under the Act. It is true that the same Act provided how the agrarian reform and resettlement would be carried out and that it envisaged the adoption of relevant subordinate legislation in that regard ... However, this does not alter the fact that when the Act entered into force the property [envisaged], including the disputed property of [the applicant foundation], became State-owned ... In the present case ... the land of the [applicant foundation] and the other property in dispute in this case became publicly owned ... by operation of law ... Even if the Agrarian Reform and Resettlement Act and its immediate application ... were to be ignored, a number of laws passed afterwards sanctioned the existing situation, that is, the status of the disputed property as property under social or State ownership. For example, the Use of Agricultural Land Act, then the Associated Labour Act, and, finally, the Property in the Ownership of the Republic of Serbia Act, confirmed such a situation and the status of the land in dispute.
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> [T]his court accepts the view of the first-instance court that the property in dispute did not become publicly owned through the confiscation of the property of the Karađorđević [royal] family, which would lead to the conclusion that this [legal] basis for the entry [in the land register] in 1947 is not valid. However, this does not mean that the registration of that property as publicly owned was incorrect at the time. Therefore, the incorrect legal basis is not of decisive importance for a different decision by this Court."

11. The applicant foundation then lodged a constitutional appeal arguing that its rights to fair proceedings and to the peaceful enjoyment of its possessions had been breached by the excessive length of the civil proceedings and by the incorrect application of the law.

12. In a decision of 23 December 2015, the Constitutional Court found a violation of the applicant foundation's right to a hearing within a reasonable time and awarded it 1,500 euros in compensation, to be converted into domestic currency at the rate applicable at the date of payment. At the same time, it declared inadmissible the remainder of the applicant foundation's constitutional appeal, holding that the Kragujevac Appeals Court had given constitutionally acceptable reasons for its judgment. On 12 February 2016 the Constitutional Court notified the foundation's representative of its decision.

RELEVANT LEGAL FRAMEWORK

A. Agrarian Reform and Resettlement Act

13. On 28 August 1945 the Agrarian Reform and Resettlement Act (*Zakon o agrarnoj reformi i kolonizaciji*, Official Gazette of the Democratic Federal Yugoslavia no. 64/45) entered into force. Its goal was to evenly redistribute agricultural land so that its ownership would be taken from the existing owners and transferred to those who actually worked the land (farmers). To achieve this, all agricultural land first needed to be expropriated

and transferred into public ownership whereupon it would be distributed to farmers.

14. Article 3 of the Act therefore provided that all agricultural land belonging to, *inter alia*, "all types of foundations", would become publicly owned.

15. Article 4 provided that the agricultural land expropriated under Article 3 of the Act would pass into public ownership without any compensation to the owners.

B. Decree confiscating all property of the Karađorđević royal family

16. By a Decree of 27 March 1947 of the Presidium of the National Assembly of Yugoslavia, all property belonging to the Karađorđević royal family was confiscated.

17. In application of that decree, on 2 August 1947 the Government of Yugoslavia issued an order, the relevant part of which read as follows:

> "[T]he Decree does not extend to the Oplenac Agricultural Estate ... which is currently administrated by the Government of Serbia, because that is the property of [the applicant foundation]. The Government of Serbia is therefore instructed that in respect of that [property] it may proceed in accordance with the Agrarian Reform and Resettlement Act."

COMPLAINTS

18. The applicant foundation complained under Article 6 § 1 of the Convention that the Appeals Court had not given sufficient reasons for its judgment of 15 January 2010 (see paragraph 10 above) and that the way it had interpreted and applied the relevant domestic law had been arbitrary.

19. The applicant foundation further complained under Article 1 of Protocol No. 1 to the Convention that the impugned Appeals Court's judgment had deprived it of its property.

20. Lastly, in its observations of 9 December 2021, the applicant foundation raised a new complaint under Article 6 § 1 of the Convention, as regards the excessive length of the proceedings (see paragraphs 8-12 above).

THE LAW

A. Alleged violation of Article 6 § 1 of the Convention on account of the alleged unfairness of the proceedings

21. The applicant foundation complained that the judgment of the Kragujevac Appeals Court (see paragraph 10 above) had not been sufficiently reasoned and that its interpretation and application of the relevant domestic law had been arbitrary. The applicant foundation relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair hearing within a reasonable time by [a] ... tribunal ..."

1. The parties' submissions

22. The Government submitted that this complaint was manifestly ill-founded because the Kragujevac Appeals Court had given a duly reasoned judgment based on the correct interpretation of the relevant domestic law. They also emphasised that it was for the domestic courts, and not the Court, to resolve problems of interpretation of domestic legislation (they referred to *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 31, *Reports of Judgments and Decisions* 1997-VIII).

23. The applicant foundation replied that under the Agrarian Reform and Resettlement Act, expropriation had not occurred *ex lege* but had required the adoption of individual decisions. In its judgment, in which it had provided a different interpretation (see paragraph 10 above), the Kragujevac Appeals Court had given reasons which could only be described as arbitrary.

2. The Court's assessment

24. The Court notes that the gist of the applicant foundation's complaint is that the Kragujevac Appeals Court wrongly interpreted the relevant domestic law, namely the Agrarian Reform and Resettlement Act (see paragraph 13 above).

25. However, it is for the national authorities, notably the courts, to interpret and apply domestic law, and the Court cannot call into question the findings of the domestic authorities on alleged errors of domestic law unless they are arbitrary or manifestly unreasonable (see, among many other authorities, *Naït-Liman v. Switzerland* [GC], no. 51357/07, § 116, 15 March 2018).

26. The Court notes that the Kragujevac Appeals Court gave detailed reasons for its view that the Oplenac Agricultural Estate had been expropriated *ex lege* by the entry into force of the Agrarian Reform and Resettlement Act on 28 August 1945 (see paragraph 10 above). Taking due note of the applicant foundation's arguments to the contrary (see paragraph 23 above), the Court considers that, having regard to the relevant provisions of that Act and to the Government of Yugoslavia's order of 2 August 1947 (see paragraphs 13-15 and 17 above), the Appeals Court's interpretation cannot be seen as arbitrary or manifestly unreasonable.

27. The applicant foundation did not complain, and there is nothing to suggest, that the proceedings were otherwise unfair. In particular, nothing suggests that the applicant foundation did not have the benefit of adversarial proceedings, namely that it was unable to adduce the arguments and evidence it considered relevant to the case, or that it did not have the opportunity of challenging effectively the arguments and evidence adduced by the State. All

its arguments which were relevant to the resolution of the case were duly heard and examined by the domestic courts and, as already noted above (see paragraph 26), the factual and legal reasons for the impugned judgment were set out at length.

28. It follows that this complaint is therefore inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 thereof.

B. Alleged violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings

29. The applicant foundation further complained, also under Article 6 § 1 of the Convention, that the length of the proceedings in the present case (see paragraphs 8-12 above) had been excessive.

30. Assuming that this complaint concerns the overall length of the proceedings (that is, including the period before the Constitutional Court, see paragraphs 11-12 above), the Court notes that those proceedings ended on 12 February 2016 (see paragraph 12 above) and the applicant foundation submitted this complaint for the first time in its observations of 9 December 2021 (see paragraph 20 above), that is, more than six months later.

31. It follows that this complaint is inadmissible under Article 35 § 1 of the Convention for non-compliance with the six-month time-limit and that it must therefore be rejected pursuant to Article 35 § 4 thereof.

C. Alleged violation of Article 1 of Protocol No. 1 to the Convention

32. The applicant foundation also complained that the Appeals Court's judgment of 15 January 2010 had deprived it of its property and breached its right to the peaceful enjoyment of its possessions. The applicant foundation relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
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> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

1. The parties' submissions

(a) The Government

33. The Government submitted that this complaint was incompatible *ratione temporis* and *ratione materiae* with the provisions of the Convention.

34. In this connection, they pointed out that the domestic courts in the civil proceedings in question had eventually established that the property in dispute had passed into public ownership by the entry into force of the Agrarian Reform and Resettlement Act in 1945 (see paragraph 10 above).

35. In any event, regardless of whether that property had been transferred into public ownership by the said Act in 1945 (see paragraph 13 above) or by the entry in the land register in 1947, which was incorrectly based on the Decree of 27 March 1947 (see paragraphs 6 and 16 above), both events had taken place even before the Convention itself had entered into force on 3 September 1953, let alone become binding for Serbia on 3 March 2004. The subsequent civil proceedings instituted, with a view to remedying the alleged violation, could not have brought it within the Court's temporal jurisdiction (they referred to *Blečić v. Croatia* [GC], no. 59532/00, § 79, ECHR 2006-III).

36. Thus, at the time the Convention entered into force in respect of Serbia, the applicant foundation had not been the owner of the property in question, which meant that Article 1 of Protocol No. 1 was inapplicable *ratione materiae* in the present case.

(b) The applicant foundation

37. The applicant foundation reiterated its view (see paragraph 23 above) that the expropriation of the property under the Agrarian Reform and Resettlement Act could not have occurred by operation of law but had required the adoption of individual decisions. Therefore, there had never been any domestic legal basis for the deprivation of its property during the communist regime. Rather, it was the Appeals Court's judgment of 15 January 2010 (see paragraph 10 above) which had deprived it of the property in question.

2. The Court's assessment

38. The Court notes at the outset that the applicant foundation did not rely on Serbian legislation providing for the restitution of property appropriated by the former communist authorities.

39. Furthermore, the Court reiterates the relevant principles concerning its temporal jurisdiction established in *Blečić* (cited above):

> "77. ... the Court's temporal jurisdiction is to be determined in relation to the facts constitutive of the alleged interference. The subsequent failure of remedies aimed at redressing that interference cannot bring it within the Court's temporal jurisdiction.
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> 78. An applicant who considers that a State has violated his rights guaranteed under the Convention is usually expected to have resort first to the means of redress available to him under domestic law. If domestic remedies prove unsuccessful and the applicant subsequently applies to the Court, a possible violation of his rights under the Convention will not be caused by the refusal to remedy the interference, but by the interference itself, it being understood that this may be in the form of a court judgment.

> 79. Therefore, in cases where the interference pre-dates ratification while the refusal to remedy it post-dates ratification, to retain the date of the latter act in determining the Court's temporal jurisdiction would result in the Convention being binding for that State in relation to a fact that had taken place before the Convention came into force in respect of that State. However, this would be contrary to the general rule of non-retroactivity of treaties ...
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> 80. Moreover, affording a remedy usually presupposes a finding that the interference was unlawful under the law in force when the interference occurred (*tempus regit actum*). Therefore, any attempt to remedy, on the basis of the Convention, an interference that had ended before the Convention came into force would necessarily lead to its retroactive application.
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> 81. In conclusion, while it is true that from the ratification date onwards all of the State's acts and omissions must conform to the Convention (see *Yağcı and Sargın v. Turkey*, 8 June 1995, § 40, Series A no. 319-A), the Convention imposes no specific obligation on the Contracting States to provide redress for wrongs or damage caused prior to that date (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 38, ECHR 2004-IX). Any other approach would undermine both the principle of non-retroactivity in the law of treaties and the fundamental distinction between violation and reparation that underlies the law of State responsibility.
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> 82. In order to establish the Court's temporal jurisdiction it is therefore essential to identify, in each specific case, the exact time of the alleged interference. In doing so the Court must take into account both the facts of which the applicant complains and the scope of the Convention right alleged to have been violated."

40. To sum up, the Court's temporal jurisdiction is to be determined in relation to the facts constitutive of the alleged interference and the subsequent failure of remedies aimed at redressing that interference cannot bring it within the Court's temporal jurisdiction (see *Blečić*, cited above, §§ 77 and 79). In order to establish the Court's temporal jurisdiction, it is therefore essential to identify, in each specific case, the exact time of the alleged interference (ibid., § 82).

41. The Court has already had an opportunity to address the issue of its temporal jurisdiction in cases similar to the present one. Specifically, in its decision in the case of *Gottwald-Markušić v. Croatia* ((dec.), no. 49049/06, 30 March 2010) it accepted the finding of the appellate court that the applicant's property had been nationalised by the mere entry into force (*ex lege*) of the Nationalisation of Rental Buildings and Construction Land Act in 1958, even though the applicant had remained recorded in the land register as the owner of the disputed property. The Court therefore concluded that, contrary to the applicant's view, it was not the appellate court's judgment adopted on 16 December 2003, that is, after Croatia's ratification of the Convention on 5 November 1997, that had led to the deprivation of her property. Rather, the property in question had been nationalised *ex lege* in 1958, when the Act in question had entered into force.

42. Likewise, having regard to its findings above concerning the applicant foundation's fairness complaint (see paragraphs 24-28), in the present case the Court considers that it was not the judgment of the Kragujevac Appeals

Court that led to the applicant foundation being deprived of the property in question. Rather, as that court established (see paragraph 10 above), the Oplenac Agricultural Estate had been expropriated *ex lege* on 28 August 1945, when the Agrarian Reform and Resettlement Act had entered into force.

43. The Appeals Court's judgment thus merely highlighted the already existing deprivation of property that had occurred during the communist regime, that is, before the Convention entered into force in respect of Serbia on 3 March 2004 (see, *mutatis mutandis* and *a fortiori*, *Gottwald-Markušić*, cited above).

44. It follows that this complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 thereof and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 29 September 2022.

Dorothee von Arnim Deputy Registrar	Jon Fridrik Kjølbro President